

INTERIM RULEMAKING NOTICE FORM

Proposed Interim Rule Number 2016-36 Rule Number He-P 814

1. Agency Name & Address: NH Dept. of Health & Human Services Health Facilities Administration 129 Pleasant Street, Brown Building Concord, NH 03301	2. RSA Authority: <u>RSA 151:9, I</u> 3. Federal Authority: _____ 4. Type of Action: Adoption <u>X</u> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
5. Filing Date: November 2, 2016	
6. Short Title: Community Residences at the Residential Care and Supported Residential Care Level	

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

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TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:
<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Summary explaining the effect of the rule:

He-P 814 sets forth the requirements necessary to establish, operate, and maintain a community residence at the residential care and supported residential care level in a manner that protects the safety and welfare of its residents.

He-P 814 expired on October 3, 2016. Pursuant to RSA 541-A:19, I(e), the adoption of the expired rules as interim rules is necessary to minimize the time between the expiration of these rules and their subsequent readoption by the Department.

9. Listing of people, enterprises, and government agencies affected by the rule:

This interim rule affects those entities operating, or seeking to operate, a community residence at the residential care and supported residential level in the state of New Hampshire, and their residents.

10. Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement.

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-P 814.01 – He-P 814.03	RSA 151:9,I(a)(b)
He-P 814.04 – He-P 814.07	RSA 151:2,I(e); RSA 151:2,II; RSA 151:9,I(a) and (b)
He-P 814.08 – He-P 814.09	RSA 151:9,I(a)
He-P 814.10	RSA 151:9,I(e)
He-P 814.11	RSA 151:9,I(a)
He-P 814.12	RSA 151:9,I(e)
He-P 814.13	RSA 151:9,I(f)(g)(l)(m)
He-P 814.14	RSA 151:9,I(f)(h)
He-P 814.15 – He-P 814.23	RSA 151:9,I(a)

11. Summary of the effect upon the state if the rule were not adopted:

If this interim rule is not adopted, the Department would lack the necessary enforcement mechanism to properly regulate these licensed facilities.

12. Proposed date of review by the Joint Legislative Committee on Administrative Rules:

November 17, 2016

13. The fiscal impact statement prepared by the Legislative Budget Assistant

Not applicable.

Adopt He-P 814, previously effective 10/3/08 (Document # 9288), and expired 10/3/16, cited and to read as follows:

CHAPTER He-P 800 RESIDENTIAL CARE AND HEALTH FACILITY RULES

PART He-P 814 COMMUNITY RESIDENCES AT THE RESIDENTIAL CARE AND SUPPORTED RESIDENTIAL CARE LEVEL

He-P 814.01 Purpose. The purpose of these rules is to set forth the licensing requirements for all community residences (CR) at the residential care and supported residential care level licensed pursuant to RSA 151:2, I(e), and thereby ensure through basic standards, the health and safety of individuals in a community residence receiving shelter, food, training and protective oversight services.

He-P 814.02 Scope. This part shall apply to any individual, agency, partnership, corporation, government entity, association or other legal entity operating a community residence except:

- (a) All facilities listed in RSA 151:2, II(a)-(g); and
- (b) All entities which are owned or operated by the state of New Hampshire, pursuant to RSA 151:2, II(h).

He-P 814.03 Definitions.

(a) “Abuse” means “emotional abuse”, “physical abuse” or “sexual abuse” as defined in this section.

(b) “Acquired brain disorder” means a disruption in brain functioning that:

- (1) Is not congenital or caused by birth trauma;
- (2) Presents a severe and life-long disabling condition, which significantly impairs a person's ability to function in society;
- (3) Occurs prior to age 60;
- (4) Is attributable to one or more of the following reasons:
 - a. External trauma to the brain as a result of:
 - 1. A motor vehicle incident;
 - 2. A fall;
 - 3. An assault; or
 - 4. Another related traumatic incident or occurrence;
 - b. Anoxic or hypoxic injury to the brain such as from:
 - 1. Cardiopulmonary arrest;
 - 2. Carbon monoxide poisoning;

- 3. Airway obstruction;
 - 4. Hemorrhage; or
 - 5. Near drowning;
 - c. Infectious diseases such as encephalitis and meningitis;
 - d. Brain tumor;
 - e. Intracranial surgery;
 - f. Cerebrovascular disruption such as a stroke;
 - g. Toxic exposure; and
 - h. Other neurological disorders such as Huntington's disease or multiple sclerosis which predominantly affect the central nervous system; and
- (5) Is manifested by:
- a. Significant decline in cognitive functioning and ability;
 - b. Deterioration in:
 - 1. Personality;
 - 2. Impulse control;
 - 3. Judgment;
 - 4. Modulation of mood; or
 - 5. Awareness of deficits; or
 - c. Both a. and b. above.

(c) “Activities of daily living (ADL)” means basic daily routine tasks such as:

- (1) Walking;
- (2) Bathing;
- (3) Shaving;
- (4) Brushing teeth;
- (5) Combing hair;
- (6) Dressing;

- (7) Eating;
- (8) Getting into or out of bed;
- (9) Laundry;
- (10) Cleaning room;
- (11) Managing money;
- (12) Shopping;
- (13) Using public transportation;
- (14) Writing letters;
- (15) Making telephone calls;
- (16) Obtaining and keeping appointments;
- (17) Monitoring and supervision of medication;
- (18) Recreational and leisure activities; and
- (19) Management of incontinence.

(d) “Administer” means “administer” as defined by RSA 318:1, I, namely “an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person for immediate consumption or use.”

(e) “Administrative remedy” means a corrective action imposed upon a licensee in response to non-compliance with RSA 151 and He-P 814.

(f) “Administrator” means the licensee or individual appointed by the licensee to be responsible for all aspects of the daily operation of the licensed premises.

(g) “Admission” means accepted by a licensee for the provision of services to an individual.

(h) “Agent” means an adult to whom authority to make health care decisions is delegated under an activated durable power of attorney for health care executed in accordance with RSA 137-J.

(i) “Applicant” means an individual, agency, partnership, corporation, government entity, association, or other legal entity seeking a license to operate a CR pursuant to RSA 151:2, I(e).

(j) “Change of ownership” means the transfer in the controlling interest of an established CR to any individual, agency, partnership, corporation, government entity, association or other legal entity.

(k) “Chemical restraint” means any medication prescribed to control an individual’s behavior or emotional state without a supporting diagnosis or for the convenience of program personnel.

(l) “Commissioner” means the commissioner of the New Hampshire department of health and human services or his or her designee.

(m) “Community residence (CR)” means a facility of 4 or more individuals that is both certified by the department under RSA 126-A and licensed by the department under RSA 151, and that is operating in accordance with He-M 1001 or He-M 1002. The term includes “home”.

(n) “Days” means calendar days unless otherwise specified in the rule.

(o) “Deficiency” means any action, failure to act or other set of circumstances that cause a licensee to be out of compliance with RSA 151 or He-P 814.

(p) “Department” means the New Hampshire department of health and human services.

(q) “Designated Receiving Facility (DRF)” means a facility, which receives persons for involuntary admissions under RSA 171-B. A DRF may be designated by the commissioner for one or more purposes, including, but not limited to:

(1) Receiving persons for involuntary admission directly pursuant to a court order; and

(2) Receiving involuntarily admitted persons by transfer with the approval of the commissioner or designee.

(r) “Developmental disability” means “developmental disability” as defined in RSA 171-A:2, V, namely, “a disability:

(1) Which is attributable to mental retardation, cerebral palsy, epilepsy, autism, or a specific learning disability, or any other condition of an individual found to be closely related to mental retardation as it refers to general intellectual functioning or impairment in adaptive behavior or requires treatment similar to that required for mentally retarded individuals; and

(2) Which originates before such individual attains age 22, has continued or can be expected to continue indefinitely, and constitutes a severe handicap to such individual’s ability to function normally in society”;

(s) “Direct care personnel” means any person providing hands on care or services to an individual.

(t) “Directed plan of correction” means a plan developed and written by the department that specifies the actions the licensee must take to correct identified deficiencies.

(u) “Emergency plan” means a document outlining the responsibilities of personnel in an emergency.

(v) “Emotional abuse” means the misuse of power, authority, or both, verbal harassment, or unreasonable confinement which results or could result in the mental anguish or emotional distress of an individual.

(w) “Exploitation” means the illegal use of an individual’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or person’s property for any purpose not in the proper and lawful execution of a trust, including, but not limited to, situations where a person obtains money, property, or services from an individual through the use of undue influence, harassment, duress, deception or fraud.

(x) “Guardian” means a person appointed in accordance with RSA 464-A to make informed decisions relative to the individual’s health care and other personal needs.

(y) “Household member” means the caregiver, all family members and any other individuals age 17 or older, who is not an individual, as defined in (z) below, who resides at the licensed premises for more than 30 days.

(z) “Individual” means the person who is admitted to the community residence for care, services and training regardless of the length of stay and is eligible for services due to acquired brain disorder, developmental disability or mental illness.

(aa) “Individual record” means a separate file maintained for each individual receiving care and services, which includes all documentation required by RSA 151, He-P 814 and all documentation received relative to the individual as required by other federal and state requirements.

(ab) “Infectious waste” means those items specified by Env-Sw 103.28 and regulated by Env-Sw 904.

(ac) “Inspection” means the process followed by the department to determine an applicant’s or a licensee’s compliance with RSA 151 and He-P 814 or to respond to allegations of non-compliance with RSA 151 or He-P 814.

(ad) “License” means the document issued to an applicant or licensee which authorizes operation of a CR in accordance with RSA 151 and He-P 814, and includes the name of the licensee, the name of the business, the physical address, the license category, the effective date and license number.

(ae) “License certificate” means the document issued by the department to an applicant or licensee that, in addition to the information contained on a license, includes the name of the administrator, the type(s) of services authorized and the number of beds that the CR is licensed for.

(af) “Licensed practitioner” means a:

- (1) Medical doctor;
- (2) Physician’s assistant;
- (3) Advanced registered nurse practitioner (ARNP);
- (4) Doctor of osteopathy; or
- (5) Doctor of naturopathic medicine.

(ag) “Licensed premises” means the building, or portion thereof, that comprises the physical location the department has approved for the licensee to conduct operations in accordance with its license.

(ah) “Licensee” means any person or legal entity to which a license has been issued pursuant to RSA 151.

(ai) “Licensing classification” means the specific category of services authorized by a license.

(aj) “Mechanical restraint” means locked, secured or alarmed CRs or units within an CR, or anklets, bracelets or similar devices that cause a door to automatically lock when approached, thereby preventing an individual from freely exiting the CR or unit within.

(ak) “Mental illness” means “mental illness” as defined in RSA 135-C:2, X, namely “a substantial impairment of emotional processes, or of the ability to exercise conscious control of one’s actions, or of the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions. It does not include impairment primarily caused by:

- (1) Epilepsy;
- (2) Mental retardation;
- (3) Continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs; or
- (4) Dependence upon or addiction to any substance such as alcohol or drugs.”

(al) “Neglect” means an act or omission, which results or could result in the deprivation of essential services or supports necessary to maintain the minimum mental, emotional or physical health and safety of an individual.

(am) “Patient rights” means the privileges and responsibilities possessed by each individual provided by RSA 151:21.

(an) “Personal assistance” means providing or assisting an individual in obtaining one or more of the following services:

- (1) Assistance with ADL, such as grooming, toileting, eating, dressing, getting into or out of a bed or chair, walking, or monitoring, supervision or administration of medication;
- (2) Assistance with instrumental activities of daily living such as doing laundry, food preparation, obtaining appointments, or engaging in recreational or leisure activities;
- (3) Supportive services such as recreational and leisure activities, transportation, social services, medical, dental, and other health care services, habilitation or rehabilitation services, day care, or other services required to meet an individual’s needs; or
- (4) Monitoring an individual’s activities to provide for the individual’s and others’ safety and well-being including, general supervision or oversight of the physical and mental well-being of an individual who needs assistance to maintain his or her participation in the facility or who needs assistance to manage his or her personal or financial affairs, regardless of whether a guardian has been appointed for the individual.

(ao) “Personal representative” means a person designated in accordance with RSA 151:19 to assist the individual for a specific, limited purpose or for the general purpose of assisting an individual in the exercise of any rights.

(ap) “Personnel” means a person, either paid or volunteer, who provides direct or indirect care or services or both to an individual.

(aq) “Physical abuse” means the use of physical force that results or could result in physical injury to an individual.

(ar) “Physical restraint” means the use of hands-on or other physically applied technique to physically limit the individual’s freedom of movement, which includes but is not limited to forced escorts, holding, prone restraints or other containment techniques.

(as) “Plan of correction (POC)” means a plan developed and written by the licensee, which specifies the actions that will be taken to correct identified deficiencies.

(at) “Pro re nata (PRN) medication” means medication taken as circumstances may require.

(au) “Procedure” means a licensee’s written, standardized method of performing duties and providing services.

(av) “Protective care” means the provision of individual monitoring services, including but not limited to:

- (1) Knowledge of individual whereabouts; and
- (2) Minimizing the likelihood of accident or injury.

(aw) “Self-evacuate” means that the individual can initiate and complete movement from any location in the facility to an exit with or without personnel assistance.

(ax) “Service” means a specific activity performed by the licensee, either directly or indirectly, to benefit or assist an individual.

(ay) “Sexual abuse” means contact or interaction of a sexual nature involving an individual without his or her informed consent.

(az) “Significant change” means a visible or observable change in functional, cognitive or daily activity ability or limitations of the individual.

(ba) “Supervision” means the process by which the individual is guided and assisted in the activities and behaviors necessary to achieve and maintain his or her maximum independence.

(bb) “Unusual incident” means an occurrence of any of the following while the individual is either in the CR or in the care of CR personnel:

- (1) The death of the individual;
- (2) An accident or other unanticipated circumstance that has resulted in an injury that requires treatment by a licensed practitioner; or
- (3) An elopement from the CR or other circumstances that resulted in the notification and/or involvement of law enforcement.

He-P 814.04 Application for Licensure as a Community Residence.

(a) Before submitting an application for licensure as a community residence, the applicant shall first request and receive a waiver from the department authorizing the applicant to operate a community residence with more than 3 individuals.

(b) For existing facilities which intend to seek licensure as a community residence, the applicant shall request and receive a statement from the department which states that an assessment has been completed to determine the level of care which is required by the individuals in the home, and a determination as to whether the home is to be licensed to provide residential care or supported residential care services to 4 or more individuals.

(c) For new facilities proposing to become licensed as a community residence, the applicant shall determine the level of services the applicant intends to provide and ensure that the assessment and individual service plan for each proposed placement to the community residence meets the requirements for the level of care for which the facility is requesting licensing.

He-P 814.05 Initial License Application Requirements.

(a) Each applicant for a license shall comply with the requirements of RSA 151:4, I-III(a), and submit the following to the department:

(1) A completed application form entitled “Application for Residential or Health Care License,” signed by the applicant or 2 of the corporate officers affirming the following:

“I affirm that I am familiar with the requirements of RSA 151 and the rules adopted thereunder and that the premises are in full compliance. I understand that providing false information shall be grounds for denial, suspension, or revocation of the license, and the imposition of a fine.”;

(2) A floor plan of the prospective CR;

(3) If applicable, proof of authorization from the New Hampshire secretary of state to do business in New Hampshire in the form of one of the following:

- a. “Certificate of Authority,” if a corporation;
- b. “Certificate of Formation,” if a limited liability corporation; or
- c. “Certificate of Trade Name,” if a sole proprietorship or if otherwise applicable;

(4) A resume identifying the name and qualifications of the CR administrator;

(5) Copies of applicable licenses and/or certificates for the CR administrator;

(6) Written local approvals as follows:

a. For an existing building, the following written local approvals shall be obtained no more than 90 days prior to submission of the application, from the following local officials, or if there is no such official(s), from the board of selectmen or mayor:

- 1. The health officer verifying that the applicant complies with all applicable local health requirements and drinking water and wastewater requirements;

2. The building official verifying that the applicant complies with all applicable state building codes and local building ordinances;
3. The zoning officer verifying that the applicant complies with all applicable local zoning ordinances; and
4. The fire chief verifying that the applicant complies with the state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety, and local fire ordinances applicable for a health care facility; and

b. For a building under construction, the written approvals required by a. above shall be submitted at the time of the application based on the local official's review of the building plans and again upon completion of the construction project;

(7) Documentation that the water supply has been tested in accordance with RSA 485 and Env-Ws 313.01 and 314.01, or documentation that the CR is on a municipal water system as defined in Env-Ws 302.45;

(8) A written disclosure from the applicant, including the licensee, administrator, and each household member, as applicable, containing a list of any:

- a. Convictions in this or any other state;
- b. Adjudications of juvenile delinquency;
- c. Permanent restraining or protective orders;
- d. Findings by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation; and
- e. An explanation of the circumstances surrounding the disclosed matters described in a. through d. above; and

(9) The results of a criminal records check from the NH department of safety for the applicant, licensee, administrator, and each household member, as applicable.

(b) Information disclosed regarding adjudication of juvenile delinquency, as required by (a)(8)b. above, shall be confidential and shall not be released except in a proceeding involving the question of licensure, such as revocation of a license, or pursuant to court order.

(c) The applicant shall mail or hand-deliver the documents to:

Department of Health and Human Services
Health Facilities Administration
129 Pleasant Street
Concord, NH 03301

He-P 814.06 Processing of Applications and Issuance of Licenses.

(a) An application for an initial license shall be complete when the department determines that all items required by He-P 814.05(a) have been received.

(b) If an application does not contain all of the items required by He-P 814.05(a), the department shall notify the applicant in writing of the items required before the application can be processed.

(c) The department shall deny a licensing request after reviewing the information in He-P 814.05(a)(8) and (9) above if, after review, it determines that the applicant, licensee, administrator or household member:

(1) Has been convicted of any felony in this or any other state;

(2) Has been convicted of a sexual assault, other violent crime, assault, fraud, abuse, neglect or exploitation;

(3) Has had a finding by the department or any administrative agency in this or any other state for assault, fraud, abuse, neglect or exploitation of any person; or

(4) Otherwise poses a threat to the health, safety or well-being of individuals.

(d) An inspection shall be completed in accordance with He-P 814.10 prior to the issuance of a license.

(e) Following an inspection, a license shall be issued if the department determines that an applicant requesting an initial license is in full compliance with RSA 151 and He-P 814.

(f) All licenses issued in accordance with RSA 151 shall be non-transferable by person or location.

He-P 814.07 License Expirations and Procedures for Renewals.

(a) A license shall be valid on the date of issuance and expire the following year on the last day of the month it was issued unless a completed application for renewal has been received.

(b) Each licensee shall complete and submit to the department an application form pursuant to He-P 814.05(a)(1) at least 120 days prior to the expiration of the current license.

(c) The licensee shall submit with the renewal application:

(1) The materials required by He-P 814.05(a)(1), (4), (7), and (8);

(2) The current license number;

(3) A request for renewal of any existing waiver previously granted by the department, in accordance with He-P 814.10(f), if applicable; and

(4) A statement identifying any variances applied for or granted by the state fire marshal, in accordance with Saf-C 6005.03–6005.04.

(d) In addition to (c) above, the licensee shall provide documentation that every 3 years the water supply has been tested for bacteria and nitrates and determined to be at acceptable levels, in accordance with Env-Ws 313.01 for bacteria and Env-Ws 314.01 for nitrates, or documentation that the CR is on a municipal water system as defined in Env-Ws 302.45.

(e) Following an inspection as described in He-P 814.10, a license shall be renewed if the department determines that the licensee:

- (1) Submitted an application containing all the items required by (c) above, and (d) above as applicable, prior to the expiration of the current license;
- (2) If deficiencies were cited at the last licensing inspection or investigation, has submitted a POC that has been accepted by the department and implemented by the licensee; and
- (3) Is found to be in compliance with RSA 151 and He-P 814 at the renewal inspection.

(f) Any licensee who does not submit a complete application for renewal prior to the expiration of an existing license shall be required to submit an application for initial license pursuant to He-P 814.06.

(g) If a licensee chooses to cease the operation of the CR, the licensee shall submit written notification to the department at least 30 days in advance.

(h) Prior to issuing a renewal license the department shall review any of the information submitted in accordance with He-P 814.05(a)(8) above and shall deny a license renewal in accordance with He-P 814.06(e).

He-P 814.08 CR Construction, Modifications or Renovations.

(a) Sixty days prior to initiating construction, the CR shall provide to the department notice and written architectural plans, drawn to scale, for construction, renovation or structural alterations for the following:

- (1) A new building;
- (2) Alterations to any individual's area;
- (3) Alterations that require approval from local or state authorities; and
- (4) Alterations that might effect compliance with the health and safety, fire or building codes, including but not limited to, fire suppression, detection systems and means of egress.

(b) The department shall review plans for construction, renovation or structural alterations of a CR for compliance with all applicable sections of RSA 151, He-P 814 and rules adopted under RSA 126-A:20 and notify the applicant or licensee as to whether the proposed changes comply with these requirements.

(c) Department approval shall not be required prior to initiating construction, renovations or structural alterations, however an applicant or licensee who proceeds prior to receiving approval shall do so at his or her own risk.

(d) The CR shall comply with all applicable licensing regulations when doing construction, modifications or alterations.

(e) A licensee or applicant constructing, renovating, or structurally altering a building shall comply with the following:

(1) The state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety under RSA 153; and

(2) The state building code as defined in RSA 155-A:1, IV, as amended by the building code review board pursuant to RSA 155-A:10, V.

(f) All CRs newly constructed after the effective date of He-P 814 shall comply with the Health Care chapter of the American Institute of Architects, 2006 edition of “Guidelines for Design and Construction of Health Care Facilities.”

(g) The completed building shall be subject to an inspection pursuant to He-P 814.10 prior to its use.

He-P 814.09 CR Requirements for Organizational Changes.

(a) The CR shall provide the department with written notice at least 30 days prior to changes in any of the following:

- (1) Ownership;
- (2) Physical location;
- (3) Address;
- (4) Name; or
- (5) Capacity.

(b) When there is a change in the name, the CR shall submit to the department a copy of the certificate of amendment from the New Hampshire secretary of state, if applicable.

(c) The CR shall complete and submit a new application and obtain a new or revised license, license certificate or both, as applicable, prior to operating, for:

- (1) A change in ownership;
- (2) A change in the physical location; or
- (3) An increase in the number of individuals beyond what was authorized under the initial license.

(d) When there is a change in address without a change in location, the CR shall provide the department with a copy of the notification from the local, state or federal agency that requires the address change.

(e) The CR shall notify the department in writing as soon as possible prior to a change in administrator and provide the department with the following:

- (1) The information specified in He-P 814.05(a)(8) and (9);
- (2) A resume identifying the name and qualifications of the new administrator; and

(3) Copies of applicable licenses for the new administrator.

(f) Upon review of the materials submitted in accordance with (e) above, the department shall make a determination as to whether the new administrator:

(1) Does not have a history of any of the criteria identified in He-P 814.14(b)(10); and

(2) Meets the qualifications for the position as specified in He-M 1001 or He-M 1002.

(g) If the department determines that the new administrator does not meet the qualifications as specified in He-M 1001 or He-M 1002, it shall so notify the CR in writing so that a waiver can be sought or the CR can search for a qualified candidate.

(h) An inspection by the department shall be conducted prior to operation when there are changes in the following:

(1) Ownership, unless the current licensee has no outstanding administrative remedies in process and there will be no changes made by the new owner in the scope of services provided;

(2) The physical location; or

(3) An increase in the number of individuals beyond what was authorized under the initial license.

(i) A new license and license certificate shall be issued for a change in ownership or a change in physical location.

(j) A revised license and license certificate shall be issued for changes in the CR's name.

(k) A revised license certificate shall be issued for any of the following:

(1) A change of administrator;

(2) An increase in the number of individuals beyond what was authorized under the initial license;

(3) A change in address without a change in physical location; or

(4) When a waiver has been granted.

(l) Licenses issued under (i) above shall expire on the date the license issued to the previous owner would have expired.

(m) The licensee shall return the previous license to the division within 10 days of the facility changing its ownership, physical location, address or name.

He-P 814.10 Inspections.

(a) For the purpose of determining compliance with RSA 151 and He-P 814, as authorized by RSA 151:6 and RSA 151:6-a, the licensee shall admit and allow any department representative at any time to inspect the following:

- (1) The licensed premises;
- (2) All programs and services provided by the CR; and
- (3) Any records required by RSA 151 and He-P 814.

(b) The department shall conduct an inspection, including a clinical and life safety inspection, to determine full compliance with RSA 151 and He-P 814 prior to:

- (1) The issuance of an initial license;
- (2) A change in ownership except as allowed under He-P 814.09(h)(1);
- (3) A change in the physical location of the CR;
- (4) An increase in the number of individuals beyond what was authorized under the initial license;
- (5) Occupation of space after construction, renovations or alterations; or
- (6) The renewal of a license.

(c) In addition to (b) above the department shall conduct an inspection to verify the implementation of any POC accepted or issued by the department as part of an annual inspection, or as a follow-up inspection focused on confirming the implementation of a POC.

(d) A notice of deficiencies shall be issued when, as a result of an inspection, the department determines that the CR is in violation of any of the provisions of He-P 814, RSA 151, or rules adopted under RSA 126-A:20.

(e) If deficiencies were cited, the licensee shall submit a written POC, in accordance with He-P 814.13(c).

He-P 814.11 Waivers.

(a) Applicants or licensees seeking waivers of specific rules in He-P 814 shall submit a written request for a waiver to the commissioner that includes:

- (1) The specific reference to the rule for which a waiver is being sought;
- (2) A full explanation of why a waiver is necessary and how a waiver is justified;
- (3) The period of time for which the waiver is sought.

(b) A waiver shall not exceed 12 months, or the current license expiration date.

(c) A request for waiver shall be granted if the commissioner determines that the terms of the waiver proposed by the applicant or licensee:

- (1) Meets the objective or intent of the rule;

(2) Does not negatively impact public health or the health or safety of the individuals; and

(3) Does not affect the quality of individual services.

(d) The licensee's subsequent compliance with the terms of the waiver as approved shall be considered equivalent to complying with the rule from which waiver was sought.

(e) Waivers shall not be transferable.

(f) When a licensee wishes to renew the waiver beyond the approved period of time, the licensee shall apply for a new waiver by submitting the information required by (a) above:

(1) When the licensee submits its application for license renewal pursuant to He-P 814.06(c); or

(2) At least 15 days prior to the expiration of the waiver if the waiver expires on a date other than the expiration date of the license certificate.

(g) The request to renew a waiver shall be subject to (b) through (f) above.

He-P 814.12 Complaints.

(a) The department shall investigate complaints that allege:

(1) A violation of RSA 151, He-P 814 or rules adopted under RSA 126-A:20;

(2) That an person or entity is operating as a CR without being licensed; or

(3) That an person or entity is advertising or otherwise representing the CR as having or performing services for which it is not licensed to provide, pursuant to RSA 151:2, III.

(b) When practicable, the complaint shall be in writing and contain the following information:

(1) The name and address of the CR, or the alleged unlicensed person or entity;

(2) The name, address and telephone number of the complainant; and

(3) A description of the situation that supports the complaint and the alleged violation(s) of RSA 151, He-P 814 or rules adopted under RSA 126-A:20.

(c) For the licensed CR, the department shall:

(1) Provide written notification of the results of the investigation to the licensee along with an inspection report if deficiencies were found as a result of the investigation; and

(2) Notify any other federal, state or local agencies of suspected violations of their statutes or rules based on the results of the investigation, as appropriate.

(d) If the department determines that the complaint is unfounded or does not violate any statutes or rules, the department shall so notify the licensee or the unlicensed person or entity and take no further action.

(e) If the investigation results in deficiencies being cited, the licensee shall be required to submit a POC in accordance with He-P 814.13(c).

(f) For the unlicensed person or entity the department shall provide written notification to the owner or person responsible that includes:

- (1) The date of inspection;
- (2) The reasons for the inspection; and
- (3) Whether or not the inspection resulted in a determination that the services being provided require licensing under RSA 151:2, I(e).

(g) In accordance with RSA 151:7-a, II, the owner or person responsible shall be allowed 7 days from the date of receipt of the notice required by (f) above to respond to a finding that he or she is operating without a license or submit a completed application for a license.

(h) If the owner of an unlicensed facility does not comply with (g) above, or if the department does not agree with the owner's response, the department shall:

- (1) Issue a written warning to immediately comply with RSA 151 and He-P 814; and
- (2) Provide notice stating that the individual has the right to appeal the warning in accordance with RSA 151:7-a, III.

(i) Any person or entity who fails to comply after receiving a warning as described in (h) above shall be subject to an action by the department for injunctive relief under RSA 151:17.

(j) The fact that the department takes action for injunctive relief under RSA 151:17 shall not preclude the department from taking other action under RSA 151, He-P 814 or other applicable laws.

(k) Complaint investigation files shall be confidential in accordance with RSA 151:13, and shall not be disclosed publicly but shall be released by the department on written request only:

- (1) To the department of justice when relevant to a specific investigation;
- (2) To law enforcement when relevant to a specific criminal investigation;
- (3) When a court of competent jurisdiction orders the department to release such information; or
- (4) In connection with any administrative or judicial proceedings relative to the licensee.

He-P 814.13 Administrative Remedies.

(a) The department shall impose administrative remedies for violations of RSA 151, He-P 814 or other applicable licensing rules, including:

- (1) Requiring a licensee to submit a POC;
- (2) Imposing a directed POC upon a licensee;

- (3) Imposing fines upon an applicant, licensee, or unlicensed person or entity;
- (4) Suspension of a license; or
- (5) Revocation of a license.

(b) When administrative remedies are imposed, the department shall provide written notice, as applicable, which:

- (1) Identifies each deficiency;
- (2) Identifies the specific remedy(s) that has been proposed, including the amount of the fine that has been imposed, if applicable; and
- (3) Provides the licensee with the following information:
 - a. In the case of administrative fines, the right to a hearing in accordance with RSA 541-A and He-C 200 prior to payment of the fine; and
 - b. The automatic reduction of a fine by 25% if:
 - 1. The fine is paid within 10 days of the date on the written notice from the department;
 - 2. The applicant, licensee, or unlicensed person or entity submits a written statement waiving the right to an administrative hearing; and
 - 3. The deficiency has been corrected, or a POC has been accepted and approved by the department.

(c) A POC shall be developed and enforced in the following manner:

- (1) Upon receipt of a notice of deficiencies, the licensee shall submit a POC containing:
 - a. How the licensee intends to correct each deficiency;
 - b. What measures will be put in place, or what system changes will be made to ensure that the deficiency does not recur; and
 - c. The date by which each deficiency shall be corrected;
- (2) The licensee shall submit a POC to the department within 21 days of the date on the letter that transmitted the inspection report, unless the licensee requests, either verbally or in writing, and the department agrees, to extend that deadline, based on the following criteria:
 - a. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 21 day period but has been unable to do so; and
 - b. The department determines that the health, safety or well-being of an individual will not be jeopardized as a result of granting the extension;

- (3) The department shall review and accept each POC that:
 - a. Achieves compliance with RSA 151 and He-P 814;
 - b. Addresses all deficiencies and deficient practices as cited in the inspection report;
 - c. Prevents a new violation of RSA 151 or He-P 814 as a result of the implementation of the POC; and
 - d. Specifies the date upon which the deficiencies will be corrected;
- (4) If the POC is acceptable, the department shall issue a license certificate or provide written notification of acceptance of the POC, whichever is applicable;
- (5) If the POC is not acceptable, the department shall notify the licensee in writing of the reason for rejecting the POC;
- (6) The licensee shall develop and submit a revised POC within 14 days of the date of the written notification from the department that states the original POC was rejected, unless:
 - a. Within the 14 day period, extension is requested, either verbally or in writing; and
 - b. The department grants the extension, based on the following criteria:
 1. The licensee demonstrates that he or she has made a good faith effort to develop and submit the POC within the 14 day period but has been unable to do so; and
 2. The department determines that the health, safety or well-being of an individual will not be jeopardized as a result of granting the extension;
- (7) The revised POC shall comply with (1) above and be reviewed in accordance with (3) above;
- (8) If the revised POC is not acceptable to the department, or is not submitted within 14 days of the date of the written notification from the department that states the original POC was rejected, the licensee shall be subject to a directed POC in accordance with (d) below and a fine in accordance with (f)(12) below;
- (9) The department shall verify the implementation of any POC that has been submitted and accepted by:
 - a. Reviewing materials submitted by the licensee;
 - b. Conducting a follow-up inspection; or
 - c. Reviewing compliance during the next annual inspection;
- (10) Verification of the implementation of any POC shall only occur after the date of completion specified by the licensee in the plan; and
- (11) If, at the time of the next inspection, the POC or revised POC has been found not to have been implemented by the completion date, the licensee shall be:

- a. Notified by the department in accordance with (b) above; and
- b. Issued a directed POC in accordance with (d) below and a fine in accordance with (f)(12) below.

(d) The department shall develop and impose a directed POC that specifies corrective actions for the licensee to implement when:

- (1) As a result of an inspection, deficiencies were identified that require immediate corrective action to protect the health and safety of the individuals and personnel;
- (2) A revised POC is not submitted within 14 days of the written notification from the department or such later date as is applicable if an extension was granted by the department; or
- (3) A revised POC submitted by the licensee or administrator has not been accepted.

(e) If at the time of the next inspection the directed POC referenced in (d) above has been found not to have been implemented by the completion date stated in the directed POC, the department shall, as appropriate:

- (1) Impose a fine;
- (2) Deny the application for a renewal of a license; or
- (3) Revoke or suspend the license in accordance with He-P 814.14.

(f) The department shall impose fines as follows:

- (1) For a failure to cease providing unlicensed services after being notified by the department of the need for a license, in violation of RSA 151:2, the fine shall be \$2000.00;
- (2) For a failure to cease operations after a denial of a license or after receipt of an order to cease and desist immediately, in violation of RSA 151:2, the fine shall be \$2000.00;
- (3) For advertising services or otherwise representing themselves as having a license to provide services that they are not licensed to provide, in violation of RSA 151:2, III and He-P 814.14(h), the fine for an applicant, licensee or unlicensed provider shall be \$500.00;
- (4) For a failure to transfer an individual whose needs exceed the services or programs provided by the CR after being directed by the department to transfer the individual, in violation of RSA 151:5-a, the fine shall be \$500.00;
- (5) For a failure to comply with the directives of a warning issued by the department in violation of RSA 151:7-a and He-P 814.12(i), the fine shall be \$500.00;
- (6) For a failure to submit a renewal application for a license prior to the expiration date, in violation of He-P 814.07(b), the fine shall be \$100.00;
- (7) For a failure to notify the department prior to a change of ownership, in violation of He-P 814.09(a)(1), the fine shall be \$100.00;

- (8) For a failure to notify the department prior to a change in the physical location, in violation of He-P 814.09(a)(2), the fine shall be \$500.00;
- (9) For a refusal to allow access by the department to the CR's premises, programs, services or records, in violation of He-P 814.10(a), the fine for an applicant, individual or licensee shall be \$2000.00;
- (10) For a refusal to provide to the department any records maintained by the licensee and required by He-P 814.15(u), the fine for a licensee shall be \$2000.00;
- (11) For a failure to submit a POC or revised POC, within 21 or 14 days, respectively, of the date on the letter that transmits the inspection report, in violation of He-P 814.13(c)(2) and (6), the fine for a licensee shall be \$500.00 unless an extension has been granted by the department;
- (12) For a failure to implement any POC that has been accepted or issued by the department, in violation of He-P 814.13(c)(11), the fine for a licensee shall be \$500.00;
- (13) For a failure to establish, implement or comply with licensee policies, as required by He-P 814.15(d), the fine for a licensee shall be \$100.00;
- (14) For a failure to provide services or programs required by the licensing classification and specified by He-P 814.15(c), the fine for a licensee shall be \$500.00;
- (15) For exceeding the maximum number of occupants, in violation of He-P 814.15(k), the fine for a licensee shall be \$500.00;
- (16) For falsification of information contained on an application or of any records required to be maintained for licensing, in violation of He-P 814.15(f), the fine shall be \$500.00 per offense;
- (17) For a failure to meet the needs of the individual, in violation of He-P 814.15(i)(1), the fine for a licensee shall be \$500.00;
- (18) For employing an administrator or other personnel who do not meet the qualifications for the position, in violation of He-P 814.15(i)(4) and (5) the fine for a licensee shall be \$500.00;
- (19) When an inspection determines that a violation of RSA 151 or He-P 814 has the potential to jeopardize the health, safety or well-being of an individual, in addition to any other enforcement actions taken by the department, the fines assessed shall be as follows:
- a. If the same deficiency is cited within 2 years of the original deficiency, the fine shall be double the original fine, but not to exceed \$2000.00; or
 - b. If the same deficiency is cited a third time within 2 years of being fined in a. above, the fine for a licensee shall be triple the original fine, but not to exceed \$2000.00;
- (20) Each day that the individual or licensee continues to be in violation of the provisions of RSA 151 or He-P 814 shall constitute a separate violation and shall be fined in accordance with He-P 814.13; and

(21) If the applicant or licensee is making good faith efforts to comply with (4), (5) or (18) above, the department shall not issue a daily fine.

(g) Payment of any imposed fine to the department shall meet the following requirements:

(1) Payment shall be made in the form of check or money order made payable to the “Treasurer, State of New Hampshire” or cash in the exact amount due; and

(2) Cash, money order, or certified check shall be required when an applicant or licensee has issued payment to the department by check, and such check was returned for insufficient funds.

(h) The department shall offer an opportunity for informal dispute resolution to any applicant or licensee who disagrees with a deficiency cited by the department on a statement of findings, provided that the applicant or licensee submits a written request for an informal dispute resolution.

(i) The informal dispute resolution shall be requested in writing by the applicant, licensee or program director no later than 14 days from the date the statement of findings was issued by the department.

(j) The department shall review the evidence presented and provide a written notice to the applicant or licensee of its decision.

(k) An informal dispute resolution shall not be available for any applicant or licensee against whom the department has initiated action to suspend, revoke, deny or refuse to issue or renew a license.

He-P 814.14 Enforcement Actions and Hearings.

(a) Prior to imposing a fine, or denying, revoking or suspending a license, the department shall send to the applicant or licensee a written notice that sets forth:

(1) The reasons for the proposed action;

(2) The action to be taken by the department; and

(3) The right of an applicant or licensee to a hearing in accordance with RSA 151:8 or RSA 541-A:30, III, as applicable.

(b) The department shall deny an application or revoke a license if:

(1) An applicant or a licensee violated RSA 151 or He-P 814 in a manner which poses a risk of harm to an individual’s health, safety or well-being;

(2) An applicant or a licensee has failed to pay a fine imposed under administrative remedies;

(3) An applicant or a licensee has had a check returned to the department for insufficient funds and has not re-submitted the outstanding fee in the form of cash, money order or certified check;

(4) After being notified of and given an opportunity to supply missing information, an applicant or licensee fails to submit an application that meets the requirements of He-P 814.05;

(5) An applicant, licensee or any representative or employee of the applicant or licensee:

- a. Provides false or misleading information to the department;
- b. Prevents or interferes, or fails to cooperate with any inspection or investigation conducted by the department; or
- c. Fails to provide requested files or documents to the department;

(6) The licensee failed to implement or continue to implement a POC that has been accepted or imposed by the department in accordance with He-P 814.13(c) and (e);

(7) The licensee is cited a third time under RSA 151 or He-P 814 for the same violations within the last 5 inspections;

(8) A licensee, including corporation officers or board members, has had a license revoked and submits an application during the 5-year prohibition period specified in (h) below;

(9) Upon inspection, the applicant's premise is not in compliance with RSA 151 or He-P 814;

(10) The department makes a determination that one or more of the factors in He-P 814.06(e) is true; or

(11) The applicant or licensee fails to employ a qualified administrator.

(c) An applicant or licensee shall have 30 days after receipt of the notice of enforcement action to request a hearing to contest the action.

(d) If a written request for a hearing is not made pursuant to (c) above, the action of the department shall become final.

(e) The department shall order the immediate suspension of a license and the cessation of operations when it finds that the health, safety or well-being of individuals is in jeopardy and emergency action is required in accordance with RSA 541-A:30, III.

(f) If an immediate suspension is upheld, the licensee shall not resume operating until the department determines through inspection that compliance with RSA 151 and He-P 814 is achieved.

(g) Hearings under this section shall be conducted in accordance with RSA 541-A and He-C 200.

(h) When a CR's license has been denied or revoked, if the enforcement action specifically pertained to his or her role in the CR, the applicant, licensee or administrator shall not be eligible to reapply for a license or be employed as an administrator for at least 5 years from:

(1) The date of the department's decision to revoke or deny the license became effective, if no request for an administrative hearing is requested; or

(2) The date an order is issued upholding the action of the department, if a request for an administrative hearing was made and a hearing was held.

(i) Notwithstanding (h) above, the department shall consider an application submitted after the decision to revoke or deny becomes final, if the applicant demonstrates that circumstances have changed to the extent that the department now has good cause to believe that the applicant has the requisite degree of

knowledge, skills and resources necessary to maintain compliance with the provisions of RSA 151 and He-P 814.

(j) RSA 541 shall govern further appeals of department decisions under this section.

(k) No ongoing enforcement action shall preclude the imposition of any remedy available to the department under RSA 151, RSA 541-A or He-P 814.

He-P 814.15 Duties and Responsibilities of All Licensees.

(a) The licensee shall comply with all federal, state and local laws, rules, codes and ordinances, as applicable, including RSA 161-F:49 and rules promulgated thereunder.

(b) In accordance with RSA 151:20, the licensee shall have a written policy setting forth the rights and responsibilities of individuals receiving services at the CR, as well as written procedures to implement its policy to ensure that the rights set forth in RSA 151:21, "Patients' Bill of Rights" are upheld.

(c) The licensee shall define, in writing, the scope and type of services to be provided by the CR, which shall include at a minimum, the required services listed in He-P 814.16.

(d) The licensee shall develop and implement written policies and procedures governing the operation and all services provided by the CR and for:

- (1) Reviewing the policies and procedures annually; and
- (2) Revising them as needed.

(e) The licensee shall assess and monitor the quality of care and service provided to individuals on an ongoing basis.

(f) The licensee or any personnel shall not falsify any documentation or provide false or misleading information to the department.

(g) The licensee shall not:

- (1) Advertise or otherwise represent the program as operating a CR, unless it is licensed; and
- (2) Advertise that it provides services that it is not authorized to provide.

(h) The licensee shall comply with all conditions of warnings and administrative remedies issued by the department, and all court orders.

(i) Licensees shall:

- (1) Meet the needs of the individuals during those hours that the individuals are in the care of the CR;
- (2) Initiate action to maintain the CR in full compliance at all times with all relevant health and safety requirements contained in applicable federal, state and local laws, rules, regulations, and ordinances;

- (3) Establish, in writing, a chain of command that sets forth the line of authority for the operation of the CR;
 - (4) Appoint a qualified administrator, in accordance with He-M 506;
 - (5) Verify the qualifications of all personnel, in accordance with He-M 506;
 - (6) Provide sufficient numbers of personnel who are present in the CR and are qualified to meet the needs of individuals during all hours of operation;
 - (7) Provide the CR with sufficient supplies, equipment and lighting to meet the needs of the individuals; and
 - (8) Implement any POC that has been accepted or issued by the department.
- (j) The licensee shall consider all individuals to be competent and capable of making health care decisions unless the individual:
- (1) Has a guardian appointed by a court of competent jurisdiction; or
 - (2) Has a durable power of attorney for health care that has been activated.
- (k) The licensee shall not exceed the number of occupants as authorized by NFPA 101 as adopted by the commissioner of the department of safety under Saf-C 6000 and identified on the license certificate issued by the department.
- (l) The licensee shall not admit an individual whose needs exceed the program and services offered by the CR.
- (m) If the licensee accepts an individual who is known to have a disease reportable under He-P 301 or an infectious disease, which is any disease caused by the growth of microorganisms in the body which might or might not be contagious, the licensee shall follow the required procedures and personnel training for the care of the individuals, as specified by the United States Centers for Disease Control and Prevention 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings (June 2007).
- (n) The licensee shall report all positive tuberculosis test results for personnel to the office of disease control in accordance with RSA 141-C:7, He-P 301.02 and He-P 301.03.
- (o) Any licensee who admits or who has an individual with a diagnosis of dementia, Alzheimer's disease or a primary or secondary diagnosis of mental illness shall:
- (1) Require all direct care personnel caring for the individual to be trained in the special care needs of individuals with dementia, Alzheimer's disease or mental illness; and
 - (2) Provide a physical environment that has a safety and security system that prevents an individual from leaving the premises without the knowledge of personnel, if the individual:
 - a. Has eloped from the CR in the last 60 days; or
 - b. Is a danger to self or to others.

(p) In addition to the posting requirements specified in RSA 151:29, the licensee shall post the following documents in a public area:

- (1) The current license certificate issued in accordance with RSA 151:2;
- (2) All inspection reports issued in accordance with He-P 814.12(c), for the previous 12 months;
- (3) A copy of the patients' bill of rights specified by RSA 151:21;
- (4) A copy of the licensee's policies and procedures relative to the implementation of patient rights and responsibilities as required by RSA 151:20;
- (5) A copy of the licensee's complaint procedure as required by RSA 151:20, II; and
- (6) The licensee's plan for fire safety, evacuation and emergencies, identifying the location of, and access to all fire exits.

(q) Licensees shall:

(1) Within 24 hours contact the department by telephone, fax or e-mail to report an unusual incident and provide the following information:

- a. The CR name;
- b. A description of the incident, including identification of injuries, if applicable;
- c. The name of the licensee(s) or personnel involved in, witnessing or responding to the unusual incident;
- d. The name of the individual(s) or person(s) involved in or witnessing the unusual incident;
- e. The date and time of the unusual incident;
- f. The action taken in direct response to the unusual incident, including any follow-up;
- g. If medical intervention was required, by whom and the date and time;
- h. Whether the individual's guardian or agent, if any, or personnel representative was notified; and
- i. The signature of the person reporting the unusual incident;

(2) Provide the information required by (1) above in writing within 72 hours of the unusual incident if the initial contact was made by telephone or if additional information becomes available subsequent to the time the initial contact was made;

(3) Contact the department immediately by telephone, fax or e-mail to report the death of any individual or the death of any individual who dies within 10 days of an unusual incident as defined by He-P 814.03(bb)(2)-(3);

- (4) Provide the information required by (3) above in writing within 72 hours of the death of any individual or the death of any individual who dies within 10 days of an unusual incident as defined by He-P 814.03(bb)(2)-(3) if the initial contact was made by telephone or if additional information becomes available subsequent to the time the initial contact was made;
 - (5) Immediately notify the local police department, the department, guardian, agent or personnel representative if any, when an individual has an unexplained absence after the licensee has searched the building and the grounds of the CR; and
 - (6) Submit additional information if required by the department.
- (r) The licensee shall admit and allow any department representative to inspect the CR and all programs and services that are being provided at any time for the purpose of determining compliance with RSA 151 and He-P 814 as authorized by RSA 151:6 and RSA 151:6-a.
- (s) Applicants, licensees and personnel shall cooperate with the department during all departmental inspections and investigations authorized under RSA 151 and He-P 816, including allowing representatives of the department to:
- (1) Enter and complete an inspection of the premises;
 - (2) Review and reproduce any records, forms or reports which are required to be maintained or made available to the department; and
 - (3) Interview personnel and individuals of the CR.
- (t) A licensee shall, upon request, provide an individual or the individual's guardian or agent, if any, with a copy of his or her individual record pursuant to the provisions of RSA 151:21, X.
- (u) All records required for licensing shall be legible, current, accurate and available to the department during an inspection or investigation conducted in accordance with RSA 151:6 and RSA 151:6-a;
- (v) Any licensee that maintains electronic records shall develop written policies and procedures designed to protect the privacy of individuals and personnel that, at a minimum, include:
- (1) Procedures for backing up files to prevent loss of data;
 - (2) Safeguards for maintaining the confidentiality of information pertaining to individuals and personnel; and
 - (3) Systems to prevent tampering with information pertaining to individuals and personnel.
- (w) The licensee shall develop policies and procedures regarding the release of information contained in individual records.
- (x) The licensee shall provide cleaning and maintenance services, as needed to protect individuals, personnel, and the public.
- (y) The CR shall comply with all federal, state and local health, building, fire and zoning laws, rules and ordinances.

(z) If the CR is not on a municipal water system as defined in Env-Ws 302.45, the water used in the CR shall be suitable for human consumption, pursuant to Env-Ws 315 and Env-Ws 316.

(aa) The licensee shall determine whether smoking will be allowed at the CR.

(ab) If smoking is to be allowed, the licensee shall develop and implement smoking policies and designate smoking-permitted areas in accordance with RSA 155:68 and RSA 155:69 and He-P 1900, as applicable.

(ac) If the licensee holds or manages an individual's funds or possessions, it shall first receive written authorization in accordance with RSA 151:24 and RSA 151:21, VII, and such funds shall not be used for the benefit of the licensee, other individuals or other household members.

(ad) At the time of admission the licensee shall give an individual and the individual's guardian, agent, or personal representative, if applicable, a listing of all CR charges and identify what care and services are included in the charge.

(ae) The licensee shall give an individual a 30-day written notice before any increase is imposed in the cost or fees, for any CR services.

He-P 814.16 Required Facility and Individual Services. Each CR shall provide, at a minimum, services and programs for the individuals they provide services to in accordance with He-M 1001 or He-M 1002.

He-P 814.17 Medication Services. Each community residence shall provide medication services in accordance with He-M 1201 and He-M 1202.

He-P 814.18 Personnel. Each CR shall provide personnel in accordance with He-M 506 staff qualifications and staff development requirements for developmental services agencies.

He-P 814.19 Quality Improvement. Each CR shall provide quality improvement in accordance with He-M 1001 and He-M 1002.

He-P 814.20 Infection Control.

(a) The licensee shall develop and implement an infection control program that educates and provides procedures for the prevention, control and investigation of infectious and communicable diseases.

(b) The infection control program shall include written procedures for:

(1) Proper hand washing techniques;

(2) The utilization of universal precautions, as specified by the United States Centers for Disease Control and Prevention 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings (June 2007);

(3) The management of individuals with infectious or contagious diseases or illnesses who can safely participate in the program;

(4) The handling, transport and disposal of those items identified as infectious waste in Env-Sw 103.28 and regulated by Env-Sw 904; and

(5) Reporting of infectious and communicable diseases as required by He-P 301.

(c) The infection control education program shall address at a minimum the:

- (1) Cause of infection;
- (2) Effect of infections;
- (3) Transmission of infections; and
- (4) Prevention and containment of infections.

(d) Personnel infected with a disease or illness transmissible through food, saliva or droplets, shall not work in food service or provide direct care in any capacity until they are no longer contagious.

(e) Personnel infected with scabies or lice shall not provide direct care to individuals or work in food services until such time as they are no longer infected.

(f) Pursuant to RSA 141-C:1, personnel with a newly positive Mantoux tuberculosis skin test or a diagnosis of suspected active pulmonary or laryngeal tuberculosis shall be excluded from the workplace until a diagnosis of tuberculosis is excluded or until the employee is receiving tuberculosis treatment and has been determined to be non-infectious by a licensed practitioner.

(g) Personnel with an open wound who work in food service or provide direct care in any capacity shall cover the wound at all times by an impermeable, durable, tight-fitting bandage.

(h) In accordance with RSA 151:9-b, the licensee shall:

- (1) Arrange for or provide all consenting individuals an immunization for influenza and pneumococcal disease;
- (2) Arrange for or provide all consenting personnel an immunization for influenza; and
- (3) Report immunization data to the department's immunization program.

He-P 814.21 Sanitation.

(a) The licensee shall maintain a clean, safe and sanitary environment throughout the CR licensed premises.

(b) All furniture, floor, ceiling, walls and fixtures shall be clean, sanitary and in good repair.

(c) A supply of potable water shall be available for human consumption and food preparation.

(d) A supply of hot and cold running water shall be available at all times and precautions such as temperature regulation shall be taken to prevent a scalding injury to the individuals.

(e) Hot water shall be of a high enough temperature to ensure sanitation and food safety when used for laundry and food preparations.

(f) All individuals' bathing and toileting facilities shall be cleaned and disinfected as often as necessary to prevent illness or contamination.

(g) Cleaning solutions, compounds and substances considered hazardous or toxic materials, as defined in RSA 147-A:2, VII shall be distinctly labeled and legibly marked so as to identify the contents and stored in a place separate from food, medications, program supplies and other cleaning materials.

(h) Toxic materials shall not be used in a way that contaminates food, equipment or utensils or in any way other than in full compliance with the manufacturer's labeling.

(i) Only professionals authorized under RSA 430:33 may apply pesticides as defined by RSA 430:29, XXVI, for rodent or cockroach control in food storage, food preparation or dining areas.

(j) Solid waste, garbage and trash shall be stored in a manner to make inaccessible to insects and rodents, outdoor animals and facility pets.

(k) In-house trash and garbage receptacles shall be emptied in a timely manner and lined, or cleaned and disinfected after emptying.

(l) Trash receptacles in food service area shall be covered at all time.

(m) If the CR provides laundry services, the following requirements shall be met:

(1) The laundry room shall be kept separate from kitchen and dining areas;

(2) Clean linen shall be stored in a clean area and separated from soiled linens at all times;

(3) Soiled materials, linens and clothing shall be transported in a laundry bag, sack or container and washed in a sanitizing solution used in accordance with the manufacturer's recommendations; and

(4) Soiled linens and clothing which are considered contaminated with infectious waste under Env-Sw 103.28 shall be handled as infectious waste.

(n) Laundry rooms and bathrooms shall have non-porous floors.

(o) Sterile or clean supplies shall be stored in dust and moisture-free storage areas and shall not be mixed with soiled supplies.

(p) Any CR that has its own water supply and whose water has been tested and has failed to meet the acceptable levels identified in this section, or as required by the department of environmental services, shall notify the department upon receipt of notice of a failed water test.

(q) Waste water shall be disposed of through a system that meets the requirements of RSA 485-A:1 and Env-Ws 1000 of the department of environmental services. Sink drains not connected to the sanitary sewer or septic system and similar methods of disposal above ground shall be strictly prohibited.

(r) Tightly fitting screens shall be provided for all doors, windows, or other outside opening, which are kept open during the season when flies, mosquitoes and other insects are prevalent. Reasonable precautions such as repair of holes and caulking of pipe channels shall be taken to prevent the entrance of rodents and vermin.

He-P 814.22 Physical Environment.

(a) The licensed premises shall be maintained, inside and outside, so as to provide for the health, safety, well-being and comfort of individuals and personnel, including reasonable accommodations for individuals and personnel with mobility limitations.

(b) The CR shall comply with all state and local codes and ordinances for:

- (1) Zoning;
- (2) Building;
- (3) Health;
- (4) Fire;
- (5) Waste disposal; and
- (6) Water.

(c) The CR shall be accessible at all times of the year.

(d) The CR shall have a telephone accessible at all times in case of emergency.

(e) Doors and windows opening to the outside air shall be tight fitting.

(f) The CR shall be free from environmental nuisances such as noise and odors.

(g) Equipment providing heat within a CR including, but not limited to, gas furnace or boiler, oil furnace or boiler, wood stove or pellet stove shall:

- (1) Maintain a temperature of at least 70 degrees Fahrenheit during the day if individual(s) are present; and
- (2) Be serviced once a year or as recommended by the manufacturer with written documentation of such service retained for at least 4 years.

(h) Electric heating systems shall be exempt from (g)(2) above.

(i) Portable space heating devices shall be prohibited, unless the following are met:

- (1) Such devices are used only in personnel areas where personnel are present and awake at all times; and
- (2) The heating elements of such devices do not exceed 212 degrees Fahrenheit.

(k) Unvented fuel-fired heaters shall not be used in any CR.

(l) Plumbing shall be sized, installed, and maintained in accordance with the provisions of the International Plumbing Code, as specified in the state building code under RSA 155-A:1, IV, as amended by the building code review board pursuant to RSA 155-A:10, V.

(m) Ventilation shall be provided by means of a mechanical ventilation system or one or more screened windows that can be opened.

(n) Doors that are self-closing and remain closed when not in use are exempt from the requirement in He-P 814.21(r).

(o) Lighting shall be available to allow individuals to partake in activities such as reading, needlework or handicrafts.

(p) The CR shall have dining facilities to accommodate each individual.

(q) All CRs shall have at least one toilet and one hand sink and as many additional toilets and sinks as are necessary to meet the needs of the individuals in the home, as follows:

(1) At a minimum there shall be one sink, toilet and tub or shower for every 6 individuals, and there shall be as many additional showers or bathing facilities as are necessary to meet the needs of the individuals in the home; and

(2) Separate bathroom facilities for family members and personnel shall not be counted in the 1:6 ratio as set forth in (1) above.

(r) Each bathroom shall be equipped with:

(1) Soap dispensers;

(2) Paper towels or a hand-drying device providing heated air; and

(3) Hot and cold running water.

(s) All showers and tubs shall have slip resistant floors and surfaces which are intact, easily cleanable, and impervious to water.

(t) All bathroom and closet door latches or locks shall be designed for easy opening from the inside and outside in an emergency.

(u) There shall be sufficient space and equipment for the services provided at the CR, as follows:

(1) Furniture to allow for each individual to sit comfortably as necessary throughout the day;

(2) Tables and chairs to assure that each individual has a seat at a table for each meal or snack and for doing activities such as crafts or puzzles; and

(3) Supplies such as plates, cups, glasses, silverware, liquid soap for hand washing, toilet tissue and paper towels in a supply to accommodate the number of individuals authorized by the license.

(v) There shall be at least 80 square feet per one bedroom and 140 square feet per room with 2 beds exclusive of space required for closets, wardrobe, dressers and toilet room.

(w) No individual's room shall accommodate more than 2 individuals.

(x) Each individual shall have:

- (1) A bed appropriate to the needs of the individual;
- (2) A firm mattress with cover;
- (3) A pillow, linens and blankets;
- (4) Personal hygiene and grooming equipment such as comb, toothbrush and razor;
- (5) Bureau with mirror;
- (6) Bedside table;
- (7) Lamp; and
- (8) Upholstered chair.

(y) The individual or guardian may indicate and the home shall document that the individual does not wish or need to have one or more of the above items and the reason for the removal.

(z) The individual may provide items listed in (x) from his or her own personal possessions provided that they are clean and in good repair.

(aa) Each individual room door shall be of the side hinge type. Folding doors or curtains shall be prohibited.

(ab) Each individual room shall contain a closet or storage space for the individual's personal belongings.

(ac) Each individual room shall have its own separate entry to permit the individual to reach his or her room without passing through the room of another person.

(ad) Individuals shall have a living or multi-purpose room for their use which has a capacity of meeting the needs of the individuals. Such rooms shall be provided with reading lamps, chairs, tables, and couches, which shall be comfortable, and in good repair.

He-P 814.23 Emergency and Fire Safety.

(a) All CRs shall meet the requirements of the appropriate chapter of NFPA 101 as adopted by the commissioner of the department of safety under Saf-C 6000 and any pertinent chapter and related codes regarding the installation, testing and maintenance of the fire alarm system.

(b) All CRs shall have, at a minimum:

- (1) One of the following:

a. Approved smoke alarms installed inside every sleeping room, outside every sleeping area in the immediate vicinity of the bedrooms, and on all levels, including basements, that are interconnected and powered by the CR's electrical service; or

b. A wireless fire alarm system approved by the State of NH fire marshal;

(2) At least one ABC type fire extinguisher on every level; and

(3) A carbon monoxide monitor on every level.

(c) An emergency and fire safety program shall be developed and implemented to provide for the safety of individuals and personnel.

(d) Immediately following any fire or emergency situation, licensees shall notify the department by phone and in writing within 72 hours, with the exception of:

(1) A false alarm or emergency medical services (EMS) transport for a non-emergent reason; or

(2) EMS transport related to known pre-existing conditions.

(e) The written notification required by (d) above shall include:

(1) The date and time of the incident;

(2) A description of the location and extent of the incident, including any injuries to individuals or personnel or damage sustained by the CR;

(3) A description of events preceding and following the incident;

(4) The name of any personnel or individuals who were evacuated as a result of the incident, if applicable;

(5) The name of any personnel or individuals who required medical treatment as a result of the incident, if applicable; and

(6) The name of the person the licensee wishes the department to contact if additional information is required.

(f) For the use and storage of oxygen and other related gases, CRs shall comply with NFPA 99 as adopted by the commissioner of the department of safety under Saf-C 6000 including, but not limited to, the following:

(1) All freestanding compressed gas cylinders shall be firmly secured to the adjacent wall or secured in a stand or rack;

(2) Storage locations shall be outdoors in an enclosure or within an enclosed interior space of noncombustible or limited-combustible construction, with doors, or with gates if outdoors, that can be secured against unauthorized entry;

(3) Oxidizing gases, such as oxygen and nitrous oxide, shall:

- a. Not be stored with any flammable gas, liquid, or vapor;
 - b. Be separated from combustibles or incompatible materials by:
 - 1. A minimum distance of 20 ft (6.1 m);
 - 2. A minimum distance of 5 ft (1.5 m) if the entire storage location is protected by an automatic sprinkler system designed in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems; or
 - 3. An approved, enclosed flammable liquid storage cabinet of noncombustible construction having a minimum fire protection rating of one-half hour for cylinder storage; and
 - c. Shall be secured in an upright position, such as with racks or chains;
- (4) A precautionary sign, readable from a distance of 5 ft (1.5 m), shall be conspicuously displayed on each door or gate of the storage room or enclosure, and shall include, at a minimum, the following: "CAUTION, OXIDIZING GAS(ES) STORED WITHIN - NO SMOKING"; and
- (5) Precautionary signs, readable from a distance of 5 ft (1.5 m), and with language such as "OXYGEN IN USE, NO SMOKING", shall be conspicuously displayed wherever supplemental oxygen is in use and in aisles and walkways leading to the area of use, and shall be attached to adjacent doorways or to building walls or be supported by other appropriate means.
- (g) Flammable gases and liquids shall be stored in metal fire retardant cabinets.
- (h) Pursuant to RSA 155:68 and 69, if the licensee has chosen to allow smoking, a designated smoking-permitted area shall be provided which has, at a minimum:
- (1) A dedicated ventilation system, so that smoke or odors cannot escape or be detected outside the designated smoking room;
 - (2) Walls and furnishings constructed of non-combustible materials; and
 - (3) Metal waste receptacles and safe ashtrays.
- (i) Each licensee shall develop a written emergency plan that covers:
- (1) Loss of electricity, water or heat;
 - (2) Bomb threat;
 - (3) Severe weather;
 - (4) Fire;
 - (5) Gas leaks;
 - (6) Unexplained individual absences; and

- (7) Any situation that requires evacuation or closure of the CR.
- (j) Each licensee shall:
 - (1) Annually review and revise, as needed, its emergency plan;
 - (2) Submit its emergency plan to the local emergency management director and/or the local fire chief or his/her designee for review and approval when initially written and whenever the plan is revised; and
 - (3) Maintain documentation on-site which establishes that the emergency plan has been approved as required under (2) above.
- (k) Evacuation drills shall include the transmission of a fire alarm signal and simulation of emergency fire condition.
- (l) Evacuation drills shall be conducted monthly and vary in time to include all personnel.
- (m) All personnel shall participate in at least one drill quarterly.
- (n) For personnel who are unable to participate in the scheduled drill described in (m) above, on the day they return to work the administrator or designee shall, if applicable, instruct them as to any changes in the facility's fire and emergency plan and document such instruction in their personnel file.
- (o) Personnel who are unable to participate in a drill in accordance with (m) and (n) above shall participate in a drill within the next quarter.
- (p) Per-diem or temporary personnel shall not be the only person on duty unless they have:
 - (1) Participated in at least 2 actual fire drills in the facility in the past year; and
 - (2) Participated in the facility's orientation program pursuant to He-M 1001 or He-M 1002.
- (q) All emergency and evacuation drills shall be documented and include the following information:
 - (1) The names of the personnel and individuals involved in the evacuation;
 - (2) The time, including AM/PM, date, month, and year the drill was conducted;
 - (3) The exits utilized if the CR does not comply with the Health Care Chapter of the Life Safety Code as adopted by reference in the state fire code, Saf-C 6000, as adopted by the commissioner of the department of safety;
 - (4) The total time necessary to evacuate the CR, if required;
 - (5) The time needed to complete the drill; and
 - (6) Any problems encountered and corrective actions taken to rectify problems.

Appendix B

Rule	Specific State or Federal Statutes the Rule Implements
He-P 814.01 – He-P 814.03	RSA 151:9,I(a)(b)
He-P 814.04 – He-P 814.07	RSA 151:2,I(e); RSA 151:2,II; RSA 151:9,I(a) and (b)
He-P 814.08 – He-P 814.09	RSA 151:9,I(a)
He-P 814.10	RSA 151:9,I(e)
He-P 814.11	RSA 151:9,I(a)
He-P 814.12	RSA 151:9,I(e)
He-P 814.13	RSA 151:9,I(f)(g)(l)(m)
He-P 814.14	RSA 151:9,I(f)(h)
He-P 814.15 – He-P 814.23	RSA 151:9,I(a)